IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO. 1447 OF 2004
IN
APPEAL (LODGING) NO. 228 OF 2003
IN
WRIT PETITION NO. 2335 OF 2000

State of Maharashtra & ors. Appellants

vs.

Sion Shivneri Co.op.Housing Society Ltd. Respondents

Mr.Niranjan Pandit, A.G.P. for the appellants.

Mr.K.B. Irani i/b. M/s.S.Ashwinkumar & Co. for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 1st October 2004

P.C.

We heard the learned counsel for the parties and perused the affidavit and the additional affidavit in support of notice of motion as well as the reply affidavit filed by the respondents in opposition to the notice of motion.

2. In the notice of motion though it is stated that there is delay of 285 days in filing the appeal, in the additional affidavit dated 23rd September 2004 the delay appears to have been recalculated and it is stated that there is delay of 235 days in filing the appeal.

3. The affidavit in support of the notice of motion needed more clarification and, accordingly, by order dated 17th September 2004 we directed the A.G.P. to file additional affidavit explaining the delay sufficiently. Pursuant thereto the additional affidavit of Shri G.M. Chavan, Assistant Commissioner of Police has been filed on 28th September 2004.

4. The statement made by the affiant in the affidavit dated 28th September 2004 explaining the delay is thus:

> "2. I say that the Appellants have filed the above appeal on the grounds set out in detail therein. I state that the appeal was filed in April, 2004 and there being a delay of about 225 days in filing the appeal, a Notice of motion no.1447 of 2004 in Appeal (Lodging) No.228 of 2001 has been taken out for seeking condonation of the delay in filing the present Appeal.
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> 3. At the outset, I wish to correct a typographical error in the affidavit in support dated May 2004, which has appeared in paragraph 9 wherein it is stated that the Hon'ble Court be pleased to condone the delay of 285 days, when actually the delay is of about 225 days. The impugned order was passed on 10th July, 2003 and certified copy was applied for immediately by this Department. However, due to inadvertence, the Court clerk applied for the certified copy of the Minutes of the Order instead of the Judgement and Order. Hereto annexed and marked as Exhibit-1 is a copy of the said application. The said mistake was realised when a copy of the Minutes was received on 5th September, 2003 and the same was thereafter given to the Superintendent of the Government Pleader's office, who had been informed by us of our intention of filing the Appeal. I state that

on realising the said mistake, the department applied on 1st October, 2004 for certified copy of the impugned judgment and order which was received by the Department on 8th October, 2003. On receipt of the same, the Assistant Government Pleader concerned immediately in October itself drafted the Memorandum of Appeal and the Notice of motion for interim reliefs as well as the present Notice of Motion for condonation of delay and the Affidavit in support thereof.

4. I am filing the present affidavit for the purposes of explaining the further delay which took place thereafter after the said Appeal memo was ready and the condonation of delay application and the affidavit in support thereof was drafted. I state that for the purposes of filing Appeal, the Government sanction was to be obtained which could be obtained only after the certified copy was obtained. I crave leave to rely upon our Department's letter dated 19.9.2003, and the Home Department's letter dated 22.10.2003, as and when produced. I state that thereafter after obtaining the certified copy from the Government Pleader's office, the same was sent by our Department in the last week of October, 2003 to the Home Department for necessary action. The Home Department thereafter sometime in November, 2003 applied for necessary sanction of the Law & Judiciary Department. After the same was granted and was communicated to the Home Department in end of February, 2004, the Home Department thereafter informed the same to this office i.e. Office of the Commissioner of Police by their letter dated 26.2.2004, which was received on 3.3.2004. I crave leave to refer to and rely upon the letters dated 23.2.2004 and 26.2.2004 as and when produced.

5. Thereafter, our office i.e. of the Commissioner of Police, raised the bill for the said amount some time in the second week of March, 2004. The said bill was required to be submitted to the Accounts Department for release of the funds required for the Appeal. The Accounts Departments thereafter released the amount sometime in the end of March, 2004. The said amount was thereafter and remitted it to the Government Pleader's office. Our Department also got the entire papers of the

> Appeal Memo including the Annextures thereto typed and forwarded the same to the Government Pleader's office in the first week of April, 2004. It is only thereafter that the Government Pleader's office got the entire Appeal organised and finalised. The above procedure took considerable time and ultimately, the Appeal was filed on 20th April, 2004.
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> 6. In view of the above procedural delay in obtaining necessary sanctions and funds, there was further delay in filing the present Appeal. I therefore pray that the above delay be condoned and the appeal be listed for admission and be heard on merits. I say that grave and irreparable loss would be otherwise caused to the Government and our Department in particular."

5. In Collector, Land Acquisition, Anantnag & Anr. v. Master Katiji & ors., AIR 1987 S.C.1353, the Supreme Court expounded the aspects to be considered by the Court while dealing with the application for condonation of delay. It was held thus:

> "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
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> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
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> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to

have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

6. Obviously, in the backdrop of the aforesaid legal

position, each case shall have to be considered on its own facts whether the delay in filing the appeal is sufficiently explained or not. The judgment of the Single Judge of this Court by one of us (R.M.Lodha,J.) in Laxman N. Divekar vs. State of Maharashtra, 1998(3) Bom.C.R. 291 relied upon by the learned counsel for the respondents has no application in the facts of the present case. In the case of Laxman Divekar, there was delay of 750 days and neither the appellant therein showed the sufficient case for that delay nor the Court recorded the finding that the case shown by the appellant was sufficient in not preferring the appeal in time.

7. The other judgment of the learned Single Judge of this Court in the case of Municipal Corporation of Greater Mumbai & ors v/s. The Foreshore Co-operative Housing Society Ltd., Mumbai in Civil Application No.1922 of 2003 in First Appeal Stamp No.19367 of 2003 turned on its own facts and has no application to the facts of the present case.

8. As already indicated by us the question whether the appellant was prevented by sufficient cause in filing the appeal has to be seen in the facts and circumstances obtaining in each case and there cannot be any generalisation of view. The additional affidavit

reference of which has been made by us above clearly indicates that there was no want of diligence on the part of the State Government and its officials in preferring the appeal. There was no deliberate delay as well. It was the mistake and inadvertence of the clerk in the office of the Government Pleader that initially the application for certified copy was made for the Minutes of the Order instead of the judgment and order. Copy of the Minutes was received on 1st September 2003 and then that it was detected that there was mistake in applying for the copy of the Minutes instead of the judgment and order. Fresh application was made on 1st October 2003. The copy of which was received on 8th October 2003. The Assistant Government Pleader then drafted the memorandum of appeal and notice of motion and then it was sent to the Law and Judiciary Department for approval and sanction. Ultimately the appeal was preferred in the month of April 2004.

9. In the peculiar facts and circumstances of the case, we are satisfied that delay in filing the appeal is sufficiently explained.

10. We, accordingly, condone the the delay in filing the appeal.

11. Notice of motion is disposed of accordingly.

12. Office is directed to process the appeal and post it for admission as and when numbered.

(R.M.LODHA,J.)

(J.P. DEVADHAR,J.)